## SINGAPORE REPORTS

# Ang Eng Beng v Public Prosecutor

COURT OF APPEAL (SINGAPORE) — CRIMINAL MOTION NO 21 OF 1989
WEE CHONG JIN CJ, LAI KEW CHAI AND YONG PUNG HOW JJ
25 SEPTEMBER 1990

*Criminal law — Common intention — Conviction for offence of being jointly concerned in a robbery where hurt was caused — Proof of common intention to commit robbery between accused and person causing hurt — Penal Code (Cap 103, 1985 Ed), ss 34, 37 & 394*

The applicant was tried and convicted with two others of being jointly concerned in robbing another in the course of which the victim was hurt. His appeal to the High Court regarding his conviction was dismissed. The applicant then succeeded in his application to the High Court to reserve a question of law for the Court of Appeal's determination. The Court of Appeal was asked to determine whether in a case of a person charged with being jointly concerned with another in committing robbery under s 394 of the Penal Code, such other person in committing the robbery causing hurt, it is incumbent on the prosecution to prove the existence of a common intention to commit the robbery as between the person so charged and the person who caused the hurt.

**Held**, answering the question in the negative:

(1) A reading of s 394 shows that it deals with the group liability of robbers one or more of whose number causes hurt. Under it, the guilty act of a robber who causes hurt in committing the robbery is imported to all the others who are 'jointly concerned' in the commission of the robbery.

(2) A person liable under s 37 of the Penal Code is a person jointly concerned with the commission of robbery if it is an offence under s 394.

(3) The case law, although not dealing with s 394 directly, showed that proof of common intention was not necessary in relation to other charges. The same principles of statutory interpretation applied here. The question for determination was thus answered in the negative, and the conviction and sentence of the applicant was left undisturbed.

**Cases referred to**

1 *R* v *Yeo Kim Watt & Anor* [1946] MLJ 155 (refd)
2 *Wong Kim Wah* v *PP* [1948-49] MLJ Supp 134 (refd)

**Legislation referred to**

Penal Code (Cap 224, 1985 Ed) ss 34, 37, 394, 396

*JB Jeyaretnam* for the applicant.
*Sowaran Singh* for the respondent.

*Cur Adv Vult*

**Lai Kew Chai J** (delivering the judgment of the court): By this criminal motion we are to determine the following question of law which was reserved by the High Court for our decision pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed):

> Whether, in the case of a person charged with being jointly concerned with another person in committing robbery pursuant to s 394 of the Penal Code, such other person having in committing the robbery caused hurt, it is incumbent upon the prosecution to prove the existence of a common intention to commit the robbery as between the person so charged and the person who caused the hurt.

We are of the view that in the context mentioned in the question it is not necessary for the prosecution to prove the existence of a common intention to commit the robbery as between the person so charged and the person who caused the hurt. We accordingly answer the question in the negative. In the result, the conviction of and the minimum sentence imposed on Ang Eng Beng ('the applicant') stand undisturbed.

The applicant was tried and convicted in the district court of the offence that he and two others:

> On or about the 23rd day of November 1985 at or about 11.15pm, beside Yaohan Jurong Building, were jointly concerned in committing robbery of a gold chain valued at $504 in the possession of one Wong Frankie, m/21 years, and whilst committing the said robbery, one of them Toh Guan Chin voluntarily caused hurt to the said Wong Frankie, to wit, by fisting him on the face and had thereby committed an offence punishable under section 394 of the Penal Code, Cap 103.

Section 394 of the Penal Code (Cap 103, 1985 Ed) ('the Code') reads:

> If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person, jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for a term of not less than 5 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

The minimum sentence prescribed for the offence was imposed. He was sentenced to a term of five years' imprisonment and 12 strokes of the cane. He appealed against the conviction to the High Court. In his appeal, it was submitted that in the absence of a common intention between the applicant and Toh Guan Chin to commit the robbery, the conviction of the applicant under s 394 of the Code was wrong in law. The High Court rejected this submission and held that a common intention between the person who caused the hurt and anyone present to commit the robbery was not a necessary ingredient that the prosecution had to prove before that other person could be convicted of an offence under s 394 of the Code. Subsequently the applicant succeeded in his application to the High Court to reserve the question of law for our determination. As stated earlier, we answer the question of law in the negative.

The concept of common intention is defined by s 34 of the Code which reads:

> When a criminal act is done by several persons in furtherance of the common intention of them all, each of such person is

liable for that act in the same manner as if the act were done by him alone.

A reading of s 394 of the Code will show that it deals with the group liability of robbers one or more of whose number causes or cause hurt. Under it the guilty act of a robber who causes hurt in committing the robbery is imported to all the others who are 'jointly concerned' in the commission of the robbery. Such hurt must be caused voluntarily for the end of the robbery. The section obviously refers to two distinct classes of persons: (a) those who cause the hurt, and (b) those who do not, but are 'jointly concerned' in the commission of the robbery. It should also be noted that s 394 does not in terms provide that all the robbers must have committed the robbery 'in furtherance of the common intention of them all'. In connection with the phrase 'jointly concerned' in s 394 of the Code, counsel for the applicant submitted that group criminal liability attaches to a person for the act of another under the Code in *only* three situations. He spelt out the three situations as follows:

(i) where the other person did the act in furtherance of a common intention between them within the meaning of s 34 of the Code;
(ii) where the person is a member of an unlawful assembly along with the other person and the other person did the act in pursuance of a common object of the unlawful assembly within the meaning of s 149 of the Code; and
(iii) where the law has imposed an absolute prohibition on the doing of something and strict criminal liability is attached as, for example, where a licence holder is liable for the acts of his servants or agents.

It will be seen at once that the submission of counsel for the applicant did not deal with the joint criminal liability of persons who have done one of several acts constituting an offence as provided by s 37 of the Code. Section 37 of the Code reads: 'When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.' Such a person made liable under s 37 of the Code, in our view, is a person 'jointly concerned' with the commission of robbery if it is an offence under s 394 of the Code.

Two cases have, in our view, provided the answer to the question posed for our consideration. In *R* v *Yeo Kim Watt & Anor*,[1] Willan CJ, in delivering the judgment of the Court of Criminal Appeal, referred to s 394 of the Code and said at p 158 as follows: '... As to this, we would first point out that there is no need to have recourse to s 34 when considering s 394 ... .'

The other case is *Wong Kim Wah* v *PP*[2] which dealt with a gang robbery with murder under s 396 of the Code. Spenser Wilkinson J in delivering the judgment of the Court of Appeal (Criminal) stated at p 134 as follows: 'It is in our view settled law in this country that proof of common intention is not necessary upon a charge under s 396 of the Code.'

It is right to observe that the two cases did not directly deal with s 394 of the Code but we are of the opinion that the same principles of statutory interpretation apply to s 394.

*Order accordingly.*

Solicitors: *JB Jeyaretnam & Co.*

Reported by *Terence Tan Bian Chye*

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## Lee Kuan Yew v Jeyaretnam Joshua Benjamin

HIGH COURT (SINGAPORE) — SUIT NO 1754 OF 1988
LAI KEW CHAI J
3 AUGUST 1990

*Tort — Defamation — Fair comment — Constitutional privilege — Factors in assessing damages — Constitution of the Republic of Singapore, art 14*

The plaintiff was the Prime Minister of Singapore for the relevant period. At the 1988 general elections, the defendant, who was not himself a candidate, ran the election campaign for the Workers' Party, an opposition party, and spoke in their election rallies. At one of these rallies on 26 August 1988 ('the rally'), the defendant made statements referring to the suicide of Mr Teh Cheang Wan, then the Minister for National Development ('the speech'). The plaintiff contended that by those statements, the defendant had imputed that the plaintiff was unfit for the office of Prime Minister in that he had advised Mr Teh to commit suicide in order that the latter could avoid investigations into his conduct and thereby escape responsibility, and that he was guilty of criminal misconduct in that he abetted Mr Teh's suicide. In this action for defamation, started in respect of the speech, the defendant pleaded the defence of fair comment and constitutional privilege. The last defence was based on an American doctrine that a defendant who unwittingly defamed a politician or public figure would not be liable unless the plaintiff proved actual malice.

**Held**, giving judgment to the plaintiff:

(1) The court first had to ascertain the natural and ordinary meaning of the words used in the speech. The aim of this was to elicit the meaning of the speech to find out what a fair-minded person in Singapore listening to it using his general knowledge and common sense would understand by the words spoken in context and according to the tone and mode of delivery.

(2) After viewing video tapes of the speech, the court found that the defendant was obviously suggesting that the plaintiff had encouraged the suicide of Mr Teh for the improper purpose of covering what, in a full trial, would be a most embarrassing scandal to the government and the plaintiff's political party.